

TESTIMONY AND ADVOCACY
IN VICTORIAN LAW,
LITERATURE, AND
THEOLOGY

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CHAPTER I

Eye-witness testimony and the construction of narrative

You have had a long and a fair trial, and sorry I am that it falls to my lot to acquaint you, that I am now no more at liberty to suppose you innocent, than I was before to presume you guilty.

What views you had, or what was your intention, is best known to yourself: With God and your own conscience be it. At this bar, we can judge only from appearances, and from the evidence produced to us: But do not deceive yourself; remember you are very shortly to appear before a much more awful tribunal, where no subterfuge can avail; no art, no disguise can screen you from the Searcher of all hearts: 'he revealeth the deep and secret things, he knoweth what is in the darkness, and the light dwelleth with him'.

Mr Baron Legge, in *R v. Blandy* (1752) 18 *State Trials* 1118, at 1188.

As he condemned Mary Blandy to the gallows for the murder of her father, Baron Legge stressed the inherent limitations of earthly justice. Without direct access to God's unmediated knowledge of 'reality', the jury had to decide her fate on the basis of evidence which enabled the court to construe an 'appearance of fact'. Baron Legge noted the disparity between the 'real' and the seemingly real – in the absence of her confession of intent, inferences could only be drawn from external sources of information, but the latter may nevertheless be sufficient to produce assent and conviction in the minds of the jurors. That the jury chose to disregard her protestations of innocence and condemn her to death on the basis of other evidence ensures that Blandy's trial remains relevant to a study of competing evidentiary paradigms in the eighteenth century.

In his enormously influential account of the origins of the realist novel, Ian Watt compared strategies of fictional representation with the activities of the adjudicators in a trial at common law. This passage is well known, but as it forms a point of departure for my subsequent discussion of testimonial evidence, it is worth citing at length:

The novel's mode of imitating reality may . . . be equally well summarised in terms of the procedures of another group of specialists in epistemology, the jury in a court of law. Their expectations, and those of the novel reader coincide in many ways: both want to know 'all the particulars' of a given case – the time and place of the occurrence; both must be satisfied as to the identities of the parties concerned, and will refuse to accept evidence about anyone called Sir Toby Belch or Mr. Badman – still less about a Chloe who has no surname and is 'common as the air'; and they also expect the witnesses to tell the story 'in his own words'. The jury in fact takes the 'circumstantial view of life', which T. H. Green found to be the characteristic outlook of the novel.¹

In his article entitled 'An Estimate of the Value and Influence of Works of Fiction in Modern Times', T. H. Green had sought to compare the relative merits of the epic poem, the drama and the novel. He noted:

The novel, [unlike tragedy], starts from the outside. Its main texture is a web of incidents through which the motions of the spirit must be discerned, if discerned at all. These incidents must be probable, must be such as are consistent with the observed sequences of the world . . . Observation shows us man not as self-determined, but as the creature of circumstances, as a phenomenon among other phenomena . . . As circumstances make his life what it is, so the particular combination of circumstances called happiness, constitutes its end.²

In Green's analysis, 'the circumstantial view of life' fostered by narrative fiction fails to inspire or to educate; instead, it sentimentalises the mundane, the trivial, and recommends a timid and selfish morality of 'prudence' in place of more visionary ideas of duty. Whilst the thrust of this criticism was ethical, later critics such as Alexander Welsh have realised the significance of Green's reading for an appraisal of the inter-relationship of fictional narrative and different types of evidence, such as the testimonial statement (which is privileged for the direct access it is seen to provide to intention and personal belief) and the external appearance of fact which Welsh equates with the nascent doctrine of circumstantial evidence in criminal legal procedure.

Watt's analysis emphasised the act of reading and the role of the jury in the process of judgement, and thus he chose not to pursue a closer reading of evidentiary strategies. But his seminal observations have stimulated a number of subsequent studies which examine other aspects of judicial procedure and fictional construction, such as the conception of the literary character as juridical subject and

the effect of fictional omniscience on ideas of moral development and the redemptive goals of incarceration.³ Of more immediate relevance to this study, however, are Douglas Patey's, Barbara Shapiro's, and Steven Shapin's influential explorations of early modern conceptions of evidence, probability, and proof,⁴ and Michael McKeon's comprehensive analysis of the emergence of the realist genre in *The Origins of the English Novel 1600–1740*. All posit close associations between empiricist standards of proof and the generation of assent in the construction of fictional narratives and all are, in a sense, intrigued by Watt's awareness of the historically conditioned definition of evidence itself; '[f]ormal realism is, of course, like the rules of evidence, only a convention; and there is no reason why the report on human life which is presented by it should be in fact any truer than those presented through the very different conventions of other literary genres'.⁵ So why were English theology, science, and law preoccupied with weighing proof, finding facts and ascertaining the reliability of witnesses? In *Probability and Literary Form* and in *Probability and Certainty in Seventeenth-Century England*, Patey and Shapiro suggest that each field owed much to the post-Renaissance replacement of the philosophical quest for absolute certainty with the understanding that human knowledge was invariably restricted to the realm of the 'probable', to a reading of 'appearances' rather than essential forms, or to the Baconian idea of sensory evidence.⁶ The 'probable' could be used to generate an assent to facts which amounted to moral certainty sufficient for the exercise of choice or the formation of Christian belief. To explore the indebtedness of realist fiction to the rules of evidence is thus to acknowledge the interdisciplinary reliance on the evidence of the senses characteristic of early modern English thought.

Intellectual historians such as Shapin and Shapiro place the activities of the members of the Royal Society at the heart of seventeenth-century changes in scientific and religious epistemology. In Shapin's analysis, the Royal Society 'repeatedly insisted upon the insufficiency of authoritative texts and upon the careful inspection of testimony' and its motto 'Nullius in verba (on no man's word) . . . crystallized members' insistence upon the problematic status of testimony and the epistemic virtues of direct individual experience and individual reason in the constitution of genuine knowledge'. Yet, as Shapin emphasises, in actuality this 'individualistic rhetoric . . . would count as a massive misrepresentation of scientific practice'

and many members 'also displayed keen appreciation that there was a proper, valuable, and ineradicable role for testimony and trust within legitimate empirical practices'.⁷ I will discuss the philosophy which tied creditworthiness and truth-telling in testimony to issues of honour and gentility of class in Chapter 2. For the moment it is sufficient to note the common preoccupations of the natural philosophers, the Christian apologists, and the courts, all of whom sought to assess testimony which 'fell somewhere short of absolute plausibility'.⁸ As noted in the introduction, testimony was not so much opposed to knowledge of circumstances as co-opted to serve as proof of fact. Shapiro has suggested that the concept of 'fact' which was to preoccupy both natural philosophers and divines in subsequent centuries was in turn derived from jurisprudential insistence on the distinction between matters of fact, which were decided by the jury in a common law trial, and matters of law, which lay within the adjudicatory powers of the judge alone. Hence, questions of 'fact' were placed within the realm of the thoughtful layman, and '[c]onfidence in the jury system thus contributed to the general feeling that the average independent person was capable of determining questions of fact in institutional settings with the appropriate safeguards'.⁹

Despite St Paul's assertion that 'faith is the confidence of things hoped for, the conviction of things not seen',¹⁰ early modern theology also became preoccupied with proof of the visible fact; as Shapiro observes, the need to respond to both Catholic conceptions of infallibility and to the scepticism of the atheists 'led the rational theologians to elaborate a religious epistemology that reinforced and in part shaped the more general epistemology of Locke, Boyle, and the Royal Society'.¹¹ McKeon notes the interpretative consequences of this approach: '[c]ontemporaries certainly understood that the exegetical commitment to "one sense of Scripture, the literal sense", was informed by a commitment to the evidence of the senses':

The celebrated 'plain speaking' of Puritan 'mechanick preaching' therefore consisted not in any paucity of figures but in a richness of reference to the plain things of this world, whose very proximity seemed to facilitate a spiritual pedagogy . . . Protestant belief became so intertwined with the evidence of the senses that in the end the truth of Scripture itself seemed to require vindication as the truth of 'true history'.¹²

Increasingly religion too was seen as provable by the 'evidence of the

senses' and verifiable by the reliability of the witnesses who attested to the truthfulness of the events described in the scriptural narratives.

Throughout this study I have used the term 'testimony' to refer both to oral evidence presented to an immediate adjudicative audience, and to records of oral evidence preserved for future assessment. In theological terms, 'testimony' refers both to the accounts of the resurrection contained in the canonical gospels, and to narratives of conversion in the lives of individual believers. Despite the passage of time, the immediacy of eye-witness perception is retained in the case of the modern religious convert; as Ricoeur points out, believers in any age are essentially eye-witnesses to the resurrection through the allegedly ahistorical operations of the Holy Spirit.¹³ In legal terms, 'testimony' may encompass several evidentiary categories; the testimony of an eye-witness to a civil or criminal matter given in court on oath; and the testimony of a party to a civil or criminal action presented orally, with or without the sanction of an oath, and, in a criminal case, amounting to either a confession or a statement of innocence. A confession is defined as 'an admission of the very facts in issue . . . by a party on trial for a criminal offence',¹⁴ and it may be either stated in court, or reduced to writing by an examining magistrate at the pre-trial stage. In the period under discussion, an accused could not give evidence on oath, and parties to a civil action were only rendered competent in 1851. The common characteristic of each category is the emphasis upon eye-witness perception and recollection, either of supernatural revelation in the case of religious evidence, or of the facts in dispute in a courtroom in the case of a trial at law. In contrast, anxieties about judgement based on gossip or rumour resulted in the formulation of one of the earliest exclusionary rules of evidence known to English law, namely the usual inadmissibility of hearsay material.

The role of personal testimony in the revelation and transmission of truth had long been of special significance to the English history of ideas. In the aftermath of the Reformation, with its rejection of the exclusive and infallible authority of the church in questions of biblical interpretation, the Protestant reliance on the testimony of enlightened individuals in direct communion with God flourished. In criminal cases, there was a general (but not unquestioned) acceptance of the use of confessions to obtain a conviction; in 1824, the jurist Thomas Starkie could privilege voluntary confessions as

'one of the strongest proofs of guilt' and assert with confidence that '[a] prisoner may be convicted upon his own confession, without other evidence'.¹⁵ As early as 1778, English courts had ruled that confessions must be voluntary if they were to serve as the basis for criminal convictions.¹⁶ Writing in 1842, Henry Joy noted:

In England it is held that a confession, though extra-judicial, if duly proved, is *of itself*, without the aid of any additional circumstance, sufficient to warrant the conviction of a prisoner. This being the strong and decisive effect which they give to a confession, it is justly held by them that such a confession, to be admissible, must be proved to have been freely and voluntarily made; and that it becomes inadmissible if it is tainted by any promises of pardon or application of threats.¹⁷

In contrast to apprehensions about the role of torture in the generation of confessions in continental or civilian legal systems, spiritual exhortations to confess one's guilt would not invalidate an accused's statement: Joy argues that '[s]uch spiritual convictions . . . seem, from the nature of religion, the most likely of all motives to produce truth'.¹⁸ In an analysis of the literary value of 'voluntariness', Peter Brooks has defined the paradox which lies at the heart of English thought about the status and reliability of confessional material:

Consider that the law as we know it has elaborated as a most basic right of the accused the protection against involuntary confession, while, on the other hand, western literature, from early in the romantic era onward, has made the confessional mode a crucial kind of self-expression, one that is supposed to bear a special stamp of sincerity and authenticity and to bear special witness to the truth of the individual personality.¹⁹

Brooks thus calls attention to the association between autobiography and the (Romantic) emphasis on confession and the construction of the self, which was perhaps rendered politically and generically suspect with the publication of Jean-Jacques Rousseau's *Confessions* (1765–1770).²⁰ In courts of law, however, the presentation of both witness testimony (with veracity guaranteed by the administration of an oath) and confessional statements made without access to the oath were governed by the assumption that spiritual convictions generated truth, thus ensuring the inter-relationship of religious epistemology and legal conceptions of evidentiary reliability. Changing attitudes to the status of testimony and confession therefore remained closely aligned with developments in religious thought during the eighteenth and nineteenth centuries.

This study has proceeded on the premise that contemporary debates about proof and the limits of knowledge are incorporated (whether deliberately or not) into the fiction of an era. This assumption presupposes the mimetic nature of fictional endeavours, with narrative emplotment bearing a representational relationship to the world of action and moral choice. Authors such as Samuel Richardson conceived of their own attempts to represent the 'real' in evidentiary terms:

Attentive Readers have found, and will find, that the Probability of all Stories told, or of Narrations given, depends upon small Circumstances; as may be observed, that in all Tryals for Life and Property, the / / (sic) Merits of the Cause are more determinable by such, than by the greater Facts; which usually are so laid, and taken care of, as to seem to authenticate themselves.²¹

William Hazlitt could only agree that Richardson 'sets about describing every object and transaction, as if the whole had been given in on evidence by an eye-witness'; 'every circumstance is made to tell'. The attention to detail 'gives an appearance of truth . . . and we listen with the same attention as we should to the particulars of a confidential communication'.²² Walter Wilson, the biographer of Daniel Defoe, cites Charles Lamb's observations to the same effect. The reader's assent to the narrative's 'perfect illusion' is generated by repetitive and detailed eye-witness attestations of fact: '[i]t is like reading evidence in a Court of Justice'.²³ Yet fiction is not strictly imitative and the relationship of fiction and evidence remains one of verisimilitude rather than complete identity. As Ricoeur has noted, mimesis may be defined as creative representation – 'the break that opens the space for fiction'²⁴ – and McKeon is certainly right to define 'realism' as a genre which bears a shifting relationship to that which it seeks to represent; it 'exists to concede the accountability of art to a prior reality, without seeming to compromise the uniquely modern belief that such reality as it is answerable to already is internalized in art itself as a demystified species of spirituality'.²⁵ Ricoeur stresses the selective hermeneutics of an author's 'pre-understanding of the world of action, its meaningful structures, its symbolic resources, and its temporal character'.²⁶ For each of the authors discussed in subsequent chapters, evidentiary apologetics and legal procedure constitute a significant part of this 'pre-understanding' of the 'real', which in turn informs their fiction. With the exception of Samuel Richardson and William

Godwin (who nevertheless explore ideas of proof and evidence in their most famous works), each writer has a biographical connection with the law, either by occupation (in the case of Henry Fielding, Walter Scott, Charles Dickens and Wilkie Collins) or by personal enthusiasm (in the case of George Eliot). This is not to suggest that legal training invariably produces narratives dependent upon eye-witness assertions of fact for their authenticity; for example, William Thackeray (himself briefly a law student)²⁷ experiments in *The Newcomes* (1853–1855) with a detached editorial style ‘written maturely and at ease’ when the journey of life is approaching completion; it includes assumptions, conjectures, the partial recovery of recollections, as well as frequent adjurations to the reader to enable her to interpret the scenes of fable and fancy for herself.²⁸ And the reactions of both Newman and Browning to the insistence that proof be tied to evidence at all will be examined in Chapter 4. But these are exceptions which prove the strength of the initial proposition. For the Victorian authors who form the focus of this study, their connections with the law, together with an understanding of the reading public’s enthusiasm for accounts of trials and punishments, ensured that evidence-bound paradigms of probability and proof tied their tales to a sense of competition with stories told in courts of law.

The chronological limits of my study refer to events in the lives of two of the writers whose work is most germane to my argument. In 1740, Fielding was called to the Bar, and his professional career as both a lawyer and magistrate spans a time when the modern adversarial format of the English common law trial was first emerging. In 1870, John Henry Newman published *An Essay in Aid of a Grammar of Assent*, the culmination of decades of thought about the pursuit of certitude in religious belief. Newman considers the reliability of testimony (and the role of inspiration in its generation) in a number of his works, but perhaps even more valuable to my argument is his willingness to test empiricist assumptions about the strict relationship between evidence and belief, and to question the need for demonstrable proof in religious affairs. After a century and a half in which Anglican orthodoxy insisted on the ‘Evidences’ as the basis of Christian faith, we see in Newman’s work a retreat from evidence-bound methodologies. Hence, I have regarded 1870 as representing an approximate end-point to the evidentiary apologetics of previous generations. But in order to trace changes in

Victorian conceptions of testimony and proof, I must begin my analysis a little earlier in the eighteenth century, when the tenets of revealed religion were increasingly being tested by the methodologies of the trial format.

EIGHTEENTH-CENTURY EVIDENTIARY APOLOGETICS

In 1727, Thomas Woolston published the first of his six *Discourses on the Miracles of our Saviour*, a series of tracts which questioned the miraculous attestation of the ministry and resurrection of Jesus and asserted the allegorical origin of a number of biblical narratives. The ensuing controversy resulted in the renewal of his prosecution for blasphemy,²⁹ and he was subsequently convicted, fined and imprisoned by the Court of the King's Bench.

In 1729, Thomas Sherlock responded to the issues raised by Woolston's trial in a small publication entitled *The Tryal of the Witnesses of the Resurrection of Jesus*, in which a narrator and some of his peers from the Inns of Court convened to assess the evidence of the resurrection, with reference to the gospels as their authorities in lieu of Littleton, Plowden, and Coke. They divided amongst themselves the roles of judge, jurors, and counsel to debate the central issue, 'Whether the Objections produced by Mr. *Woolston*, are of weight to overthrow the Evidence of Christ's Resurrection.'³⁰ The Apostles were arraigned as false witnesses, and the Counsel for Woolston questioned their capacity as eye-witnesses to authenticate the miraculous:

[A]ltho in common Life we act in a thousand Instances upon the Faith and Credit of human Testimony; yet the Reason for so doing is not the same in the Case before us. In common Affairs, where nothing is asserted but what is probable, and possible, and according to the usual Course of Nature, a reasonable Degree of Evidence ought to Determine every Man. For the very Probability, or Possibility of the thing, is a Support to the Evidence; and in such Cases we have no Doubt but a Man's Senses qualify him to be a Witness. But when the thing testified is contrary to the Order of Nature, and, at first sight at least, impossible, what Evidence can be sufficient to over-turn the constant Evidence of Nature, which she gives us in the uniform and regular Method of her Operations? . . . [The Resurrection] seems to be a Case exempt from human Evidence. Men have limited Senses, and a limited Reason; when they act within their Limits, we may give Credit to them; but when they talk of things removed beyond the

Reach of their Senses and Reason, we must quit our own, if we believe theirs. (pp. 58–59)

In reply, the opposing counsel emphasised the violent nature of the Apostles' deaths as attestation of their veracity – 'what greater Evidence of Sincerity can Man give or require?' (p. 81) – thus anticipating the argument which was to dominate debate as to the strength of the Christian 'Evidences' for the next one hundred years. In summation, the judge endorsed the opposing counsel's argument that evidence of the resurrection could fall within the scope of man's senses:

A Man rising from the Grave is an Object of Sense, and can give the same Evidence of his being alive, as any other Man in the World can give. So that a Resurrection consider'd only as a Fact to be proved by Evidence, is a plain Case; it requires no greater Ability in the Witnesses, than that they be able to distinguish between a Man dead, and a Man alive: A Point, in which I believe every Man living thinks himself a Judge. (p. 62)

In such a case 'there wants nothing to be proved, but only the Sincerity of the Reporter: and since voluntary Suffering for the Truth, is at least a proof of Sincerity; the Suffering of the Apostles for the Truth of the Resurrection, is a full and unexceptionable Proof' (pp. 104–105). Consequently the jury found the Apostles not guilty of providing false testimony in the case of the resurrection, and the narrative closes with the judge considering a retainer to return to the Bar 'to undertake the Cause of *Lazarus*' when his case came on next (p. 110).

The Tryal of the Witnesses is an interesting text for a number of reasons. Even in the mid-nineteenth century it was considered a noteworthy example of the 'partisan' theology of the Hanoverian period; in his contribution to *Essays and Reviews* (1860), entitled 'Tendencies of Religious Thought in England 1688–1750', Mark Pattison tells us that it went through fourteen editions, and that it was '[o]ne of the favourite books of the time'.³¹ For Pattison, the appropriation of litigious terminology by theologians was a characteristic feature of the rationalist programme, in which the divines of the eighteenth century assumed that their 'beliefs were determined by an impartial inquiry into the evidence'. This bequeathed an unfortunate legacy to subsequent generations: '[t]his stamp of advocacy which was impressed on English theology at the Reformation – its first work of consideration was an "Apology – it has not to this day shaken off . . . Theological study is still the study of topics of

defence' (p. 301). The legal discourse of accusation, defence, and proof has long been understood to provide privileged access to the truth. The fact-finding model of the trial has been central to Christian experience since the judgement of Christ and of subsequent martyrs in the reign of various Roman emperors. And as Ricoeur notes, the trial format 'extends to all situations in which a judgement or a decision can be made only at the end of a debate or confrontation between adverse opinions and conflicting points of view'.³² But the similarities between religious and legal thought in the eighteenth century were not purely methodological; they were bound together by broader metaphysical and eschatological associations which provided a rich fund of imagery for the usage of theologians and authors of fiction alike.

For Bishop Joseph Butler, writing in his *Analogy of Religion, Natural and Revealed, to the Constitution and Course of Nature* (1736), life was a state of probation, an extended trial of moral integrity before the final apocalyptic judgement, and assize sermons also provided regular opportunities for the equation of divine and legal processes of adjudication.³³ For example, on Thursday 16 March, 1769, Henry Venn, Vicar of Huddersfield, preached at the Assizes in Kingston, Surrey, on the topic of 'Man a Condemned Prisoner, and Christ the Strong Hold to Save Him' in which he argued for post-lapsarian depravity and the essential similarity between the common man and the capital offender:

These [felons] are imprisoned to be brought to trial, and, upon conviction according to law, sentenced to suffer a shameful death. The law, their high and mighty accuser, pays no regard to their persons, or fond pleas to escape, or agonizing cries for mercy. Nothing but blood can pay the forfeit. Nothing but blood deter others, from treading in their steps. Exactly the same is the case with us. What man is he that liveth, whom death will not arrest, as the pursuivant of justice, to place him at the Bar of GOD?³⁴

So men and women stand at the Bar before God, condemned without Christ's mediation and atonement, and the motif of the trial assumes a theological as well as a penal significance. The idea of life as a trial of one's faith recalls Butler's emphasis on probation and judgement, but it also implies the rationalist strategy of 'trying' the evidentiary basis of one's faith. Both resonances are refracted in novels as diverse as *Callista*, *Romola* and *Robert Elsmere*, and all raise issues of advocacy, representation, and judgement.

The world-view which supported the epistemology of the law

during the eighteenth century has been labelled 'natural theology', and George Levine, amongst others, has drawn attention to the ways in which this very title 'indicates that English science was intimately connected with its religion'; '[r]eligion and science alike were concerned to describe a cosmos all of whose phenomena made sense, manifested intelligence and design'.³⁵ According to Jowett, natural religion may be defined as 'a theory . . . which appeals to particular evidences for the being of a God, though resting, perhaps more safely, on the general conviction that "this universal frame cannot want a mind"'.³⁶ In 'Tendencies of Religious Thought', Pattison notes that the rationalist phase of theological development began with the publication of John Locke's text, *On the Reasonableness of Christianity* (1695), and declined with the reaction against the reform movement, and the commencement of *Tracts for the Times*, in about 1830 (pp. 258–259). During this time:

it was not merely that Rationalism then obtruded itself as a heresy, or obtained a footing of toleration within the Church, but the rationalizing method possessed itself absolutely of the whole field of theology. With some trifling exceptions, the whole of religious literature was drawn in to the endeavour to 'prove the truth' of Christianity. (p. 259)

Pattison neatly divides the rationalist era into two fifty-year periods: in the first half of the century, theologians appeared to be more devoted to the internal proofs of Christianity; in the latter half, Pattison traces the dominance of 'the "Evidences", or the historical proof of the genuineness and authenticity of the Christian records' (p. 260). Butler's *Analogy of Religion* was the foremost product of the earlier school of thought. He argued that without clear evidence of incompetence or interest, 'the *natural* Laws of human Actions require, that Testimony be admitted'³⁷ and he assumed the stance of the impartial judge rather than the impassioned advocate. In Pattison's judgement, Butler 'kn[ew] the laws of evidence, and carefully ke[pt] his statements within them'; he acknowledged any weaknesses in the historical record, thus demonstrating the 'wariness of the judicial mind' (pp. 305–306). For Butler, as for Mansel over a century later, the very obscurity of some aspects of the Christian 'Evidences' was itself illustrative of man's probationary state; he concluded that the temptation to dwell on 'speculative Difficulties in which the Evidence of Religion is involved, may make even the principal Part of some Persons (sic) trial', as they elicit either a

‘virtuous Exercise, or vitious (sic) Neglect of their Understanding, in examining or not examining into That Evidence’.³⁸

By contrast, the advocates of the school devoted to ‘external Evidences’ adopted a more strident approach which Pattison called an ‘Old Bailey theology’, in which ‘the Apostles [were] being tried once a week for the capital crime of forgery’ (p. 260). William Paley’s text entitled *A View of the Evidences of Christianity* (1794) was an enormously influential example of this evidentiary methodology. Paley could conceive of no revealed truth independent of supernatural attestation; ‘there was nothing but the miracles attributed to [Christ] by which his pretensions could be maintained for a moment’.³⁹ Alluding to David Hume’s *Enquiry Concerning Human Understanding*, which posited the inability of testimony to transmit evidence of the supernatural, Paley concurred that any interpretation of miraculous narratives involves ‘a contest of opposite improbabilities’; it is ‘a question whether it be more improbable that the miracle should be true, or the testimony false’ (vol. I, p. 11). But whereas Hume concluded that the inherent improbability of the miraculous ‘diminish[es] the force of any argument, derived from human testimony . . . in proportion as the fact is more or less unusual’,⁴⁰ Paley reposed his greatest confidence in the testimony of eye-witnesses to the ministry and resurrection of Christ and the subsequent behaviour of his Apostles. The authenticity of the New Testament is promoted by ‘the undesignedness of the agreements’ (vol. II, p. 195) between the epistles and the gospel narratives and any discrepancies can also be interpreted as evidence of their truthfulness:

The usual character of human testimony is substantial truth under circumstantial variety. This is what the daily experience of courts of justice teaches. When accounts of a transaction come from the mouths of different witnesses, it is seldom that it is not possible to pick out apparent or real inconsistencies between them. These inconsistencies are studiously displayed by an adverse pleader, but oftentimes with little impression upon the mind of the judges. On the contrary, a close and minute agreement induces the suspicion of confederacy and fraud. (vol. II, pp. 289–290)

The authority of the written record of this testimony is established in a number of ways; for example, the Johannine gospel is an independent source of corroboration for the earlier gospels, the gospels have an ‘aggregate’ as well as a ‘separate’ authority, and all were received as canonical by the primitive Christian Church (vol. I, p. 155). Like

Butler, Paley maintains that Providence has ensured the preservation and transmission of scriptural evidence, and hence Christian believers can enjoy 'historical certainty' of the facts narrated by the evangelists (vol. 1, pp. 163–164, p. 322). Paley bases much of the force of his arguments on the claim that 'men do not suffer persecution from the love of the marvellous' (vol. 1, p. 343), an assertion similar to that which would later feature in Newman's *Grammar of Assent*. The confidence he places in the transmission of testimony enables Paley to trust in the tenets of revelation. Creation remains in the care of a loving and accessible God, and man's privileged position in that scheme is guaranteed.

Contemporary fiction inevitably absorbed this preoccupation with the centrality of man's place in Creation, and the Christian teleology – with its emphasis upon redemption and salvation – gave purpose and the prospect of a meaningful closure to both individual lives and a broader idea of history. In labelling this mode of representation the 'providential aesthetic', Thomas Vargish emphasises its dependence upon the fundamental assumptions of natural theology: '[p]rovidence means foresight, foreknowledge, anticipation, preparation, plan, pattern, design'.⁴¹ Levine, too, suggests that many conventions of narrative teleology and closure 'are consonant with the natural-theological view of things'.⁴² The ethical implications of natural theology were similarly reassuring; ready access to revealed truth was available through the witnesses to the existence of God, for example, the authority of the scriptures, the power of the church, the model of personal testimonies of conversion, and the work of the conscience. Inferences as to the existence of a Creator could be drawn from the natural world. Such evidence is consciously canvassed in religious and historical novels throughout the nineteenth century – often for polemical and ideological reasons in the conflict between Catholic and Protestant readings of history – but, as Levine points out, assumptions of order and purpose also permeate less didactic works.

THE IMPACT OF GERMAN HIGHER CRITICISM ON THE AUTHORITY OF THE EYE-WITNESS

Although natural theology was not monolithic, there remained towards the end of the eighteenth century a widespread adherence to orthodox literalism which ensured that the gospels were regarded

as historical accounts of external miraculous events. Despite some localised expressions of scepticism, apologists were, on the whole, able to appeal to the doctrine of direct verbal inspiration to confirm a consequent infallibility on the part of the evangelists. But over the next few decades, the confident assumptions of the evidentiary school were dealt a number of devastating blows as voices of disagreement gained a greater public circulation. As early as the 1790s, Samuel Taylor Coleridge and dissenting theorists such as Thomas Beddoes had questioned the supernatural attestation of the Christian dispensation, and in her study of English indebtedness to German research, Elinor Shaffer observes that ‘the common experience of the Bible . . . was altered in [this] period’:

A movement of this significance and scope cannot be reduced to the mechanics (or the moralities) of transmission. The ‘collapse of the ontological foundations of religion’ (Lukac’s phrase) and the consequent reinterpretation of the major religious text of the West is a communal event. It is, of course, also a private event, and proceeds through the inner struggle of individual conscience.⁴³

Coleridge himself experienced this transition of the age. In his ‘Six Lectures on Revealed Religion, its Corruptions and Political Views’ given in Bristol in 1795, Coleridge privileged the historical position of the earliest eye-witnesses:

At the first Promulgation of a divine Mission Miracles are its best and only Tests. But the full force of such preter-natural Evidence can operate on the Eyewitnesses only. Their influence gradually decreases and becomes more and more faint and then the Accomplishment of predicted Events is substituted and discovers to us the truth of the Revealed Doctrines to us (sic) by a sufficient though not so overpowering a Light.⁴⁴

But Shaffer describes these Lectures as Coleridge’s ‘last attempt at a defence of an optimistic and necessarian view of revealed religion based on standard Unitarian authorities’ and she argues that the following year he abandoned any adherence to literalism, becoming increasingly critical of Paleyian apologetics and seeking instead ‘a revision of the entire conception of the meaning of “witness” which would have revolutionary implications also for the conception of “the visionary character” that he was evolving at the same time’.⁴⁵ Coleridge was thus enabled to subjugate ‘speculative Reason’ to ‘the *Substance*, the *Hope*, the *Love*, in one word, the *Faith* [which] are Derivatives from the practical, moral, and spiritual Nature and Being of Man’.⁴⁶

But with the advent of German higher criticism, which gathered force throughout the early nineteenth century and which culminated in the publication of influential texts such as David Strauss's *The Life of Jesus Critically Examined* (1835, translated into English in 1846), and Ludwig Feuerbach's *The Essence of Christianity* (1840, translated into English in 1854), the searing torchlight of scepticism exposed the historical inconsistencies of the sacred texts. For both Strauss and Ernest Renan (whose *Life of Jesus* appeared in 1863, translated into English in 1864), the only way to reconcile the miraculous narratives of the Bible with modern scientific knowledge was to discard the idea of the evangelist as eye-witness and to embrace the conception of the gospels as more or less mythical and legendary in origin; therefore, the modern reader could have no unmediated access to any historical kernel of fact which may (or may not) lie embedded within the narrative.

In evidentiary terms, the probative value of the gospel accounts was correspondingly decreased. They now seemed to share some of the characteristics of derivative or hearsay material which was treated so dismissively in the legal treatises of the period. For example, this description of hearsay evidence suggests clear parallels with the higher critical treatment of the gospel narratives: '[i]t is evident that proof weakens in proportion to its distance from its source . . . *a fortiori* proof is extremely weak when we are obliged to follow out a line (*parcourir une filière*) more or less complicated, before we can arrive at direct testimony'.⁴⁷ John's gospel (which had long been treasured as the most authoritative and sophisticated eye-witness account, with a particular appeal for the nineteenth century)⁴⁸ was now subject to destructive criticism, thus enabling Strauss and Renan to undermine the idea of inspiration as divine dictation. Like Coleridge, Friedrich Schleiermacher offered an alternative response to the deficiencies of the evidentiary school of thought, and, in his later work, he showed a greater willingness to resign the claim of the Christian record to historical accuracy and to remodel ecclesiastical Christology independently of its grounding in historical facts or 'events'. As Shaffer has noted:

If, by their own critical endeavour, it became clear that none of the Gospels was an eye-witness account, the status of the 'event' therein recounted must, on the old view, be diminished, its credibility undermined; but if there are no such privileged accounts, if all event is interpretation, then the Gospels need not suffer . . . The miracle becomes the paradigm of reported

historical event; the historical events reported by eye-witnesses represent instantaneous myth-making.⁴⁹

Shaffer argues that the fundamental ambiguities of the resurrection narratives came to be regarded as a new typological basis for poetic endeavour; if '[a]t the very moment of "ocular witness" the fact is lost . . . [and] moulded by the perceiver' then all perception is equally imaginative in genesis.⁵⁰ Schleiermacher, amongst others, was able to construct a theology capable of accommodating this critical scepticism.

Schleiermacher's work, *A Critical Essay on the Gospel of St. Luke*, was translated into English in 1825, and reflects his theological manifesto that 'the most pure, simple faith, and the keenest investigation are one and the same thing, inasmuch as no one who wishes to believe what is of divine origin can wish to believe illusions.'⁵¹ Rejecting Eichhorn's hypothesis of an Aramaic proto-Gospel which summarised apostolic teaching and which pre-dated and informed the work of the canonical evangelists, Schleiermacher instead undertook the linguistic equivalent of an archaeological investigation, sifting through the internal evidence of Luke's textual structure to uncover differing narrative strata, identifying contributions from contrasting sources and seeking traces of an apostolic hand. Schleiermacher dwelt upon the inconsistencies between the synoptic accounts, and explains gaps in the Lucan version by renouncing the automatic equation of evangelist with eye-witness:

Only under one view does the omission of these incidents excite no surprize, but seem natural, that is, if we suppose that the first written accounts originated in the efforts, and at the instance of persons, who, not personally acquainted with Christ, and therefore not in the same sense his contemporaries, sought for circumstantial accounts, and aimed at perpetuating by writing the voice of oral tradition before it died away. (p. 110)

Some passages, such as Chapters 8: 22–56, and 16: 16–18, and the record of the crucifixion, 'betray . . . the eye-witness from beginning to end by [their] unreserved explicitness, and vivid mode of representation' (p. 131); much of the rest is the consolidation of primitive narratives, either oral or written, from a variety of sources. Schleiermacher concludes that Luke 'is from beginning to end no more than the compiler and arranger of documents which he found in existence, and which he allows to pass unaltered through his hands' (pp. 313–314). As editor, Luke's task was to include in his account pre-existing pieces which he adjudged 'genuine and good' and thus

his work is acclaimed as 'judicious', the result of careful human judgement, and divine inspiration is reduced to 'the law according to which he arranged [the material which came into his hands]' (pp. 313-314, p. 163).

For Schleiermacher, as for Coleridge, faith was the decisive factor which enabled him to escape unnecessary reliance on the historically bound Christological paradigms of orthodoxy and to repose in a confident apprehension of the divine presence; we see his emphasis on music and emotion as the essence of the religious life in works such as *Christmas Eve* (1826). He presented a series of public lectures on the life of Jesus, beginning in 1819, and although they were not published until 1832, the notes of the lectures profoundly influenced David Friedrich Strauss, who drew on Schleiermacher's work in his seminal text *The Life of Jesus Critically Examined*.⁵² The influence of Schleiermacher's *Essay on St. Luke* also informed Charles Hennell's *An Inquiry into the Origins of Christianity* which appeared in 1838.

Hennell's *Inquiry* is notorious as one of the texts which furthered George Eliot's liberation from the tenets of evangelical orthodoxy. He portrayed Jesus as profoundly human, a product of Essene education and the expectations and fervour of a Messianic age.⁵³ Hennell adopted Schleiermacher's assessment of Luke's role as an evangelist, and he summarily dismissed any claim to immediate eye-witness perception on the part of the authors of Matthew and Mark: the former 'collected the relics of the acts and sayings of Jesus reported by Matthew the Apostle, introducing some traditions which he found elsewhere, and filling up copiously from his own invention' (p. 80); the latter was an honest writer who was frequently led by the 'warmth of narration . . . to exaggerate and to embellish upon the materials before him; but not more than has been done by many historians of good credit, since the minute particulars filled up by him, are, in general, only such as would be suggested by the belief of the main facts' (p. 92). But Hennell reserved his most damaging criticism for the Johannine gospel. Whereas this text had previously been esteemed as the mature, sophisticated production of the favourite disciple of Christ, devoid of the errors and omissions which flawed the synoptic accounts, Hennell saw only a 'species of imposition' deliberately designed to enhance Jesus's Messianic claims (p. 109). Divine inspiration thus became a form of economy with the truth which bordered on 'wilful falsehood' (p. 117). John equated the promptings of his own imagination with the work of the Holy Spirit,

a confusion which Hennell accepts as consonant with the hope of the early church that the Paraclete would comfort them after Christ's death (p. 111). Hennell then seeks to define the etymology of the word 'witness' in purely theological terms:

In the book of Acts, the Apostles are frequently made to profess themselves 'witnesses, μαρτυρες, of the resurrection of Jesus'. But as the word does not signify, of necessity, an eye-witness, but rather an assertor or testifier, this declaration of the Apostles may mean only that they believed, and were ready to assert, that he was risen. That they had actually *seen him alive* since his supposed resurrection, is quite a distinct assertion, and not included in the former. (p. 114)

Consequently, religious men and women may meditate on 'the interesting incidents which have for ever consecrated the plains of Palestine; but . . . for this exercise no single spot of earth, and no one page of its history, furnishes the exclusive theme' (p. 369).

Many of Hennell's most critical observations were pre-empted by David Strauss's *The Life of Jesus Critically Examined*, which was translated into English from the fourth edition by George Eliot and Rufa Brabant Hennell in 1846. Eliot's translation of Strauss's work was to be of profound influence on the mid-Victorian age; as Shaffer has noted, 'the Biblical criticism which in Coleridge's youth might appear an obscure, difficult, largely foreign scholarly technique confined to a handful of professors of Oriental languages becomes by George Eliot's time the medium of secular religious experience'.⁵⁴ Like Hennell, Strauss begins with the assumptions that 'we do not possess the immediate record of an eye-witness in any one of the four gospels', that the 'infection' of factual material with the ingredients of legend occurs at the very earliest stage of church history, and that the definition of eye-witness perception does not preclude fabrication: 'Eye-witnesses in the more extended sense, who had only seen Jesus occasionally and not been his constant companions, must, on the contrary, have been strongly tempted to fill up their imperfect knowledge of his history with mythical representations.'⁵⁵ John in particular is 'tax[ed] . . . with free invention' and any reliance on passages from his narrative – for example the quotation of Chapter 14: 25–26 to prove the assistance of the Paraclete in the construction of the gospel accounts – is vitiated on the grounds of circularity; it is both philosophically flawed 'to prove the truthfulness of the discourses in John, by a promise which appears nowhere but in those discourses' and unscientific to appeal to the operation of a super-

natural agency in the midst of rational enquiry.⁵⁶ In his whole-hearted acceptance of the mythological paradigm, Strauss rejects Schleiermacher's premise that the boundary between fact and fiction – and hence the traces of apostolical authorship – can be identified by the expenditure of energy and expertise. Instead, Strauss argues that it is intellectually more consistent to discard any claim of a connection with historical reality: 'we must not . . . seek in the particular supernatural cures which the Gospels narrate, the natural reality; on the contrary, we must admit that this is totally lost to us, and that the supernatural has usurped its place.'⁵⁷ He thus seeks to articulate the ideas – Messianic, Judaic, or Platonic – which may have informed an evangelist's representation of a particular incident, and this enables him to strip the notion of 'event' of any relation to the historical record. His treatment of the narratives of Christ's transfiguration is typical; he discounts both the orthodox supernatural explanation, and the rational approach (which postulates a trick of the light visible to the watching disciples), in favour of a mythological interpretation which stresses the Messianic expectations of the Jewish people:

the natural system of interpretation, while it seeks to preserve the historical certainty of the narratives, loses their ideal truth – sacrifices the essence to the form: whereas the mythical interpretation, by renouncing the historical body of such narratives, rescues and preserves the idea which resides in them, and which alone constitutes their vitality and spirit . . . [A]ccording to the mythical interpretation, I do not, it is true, see in the evangelical narrative any real event, – I yet retain a sense, a purpose in the narrative, know to what sentiments and thoughts of the first Christian community it owes its origin, and why the authors of the gospels included so important a passage in their memoirs.⁵⁸

For Strauss, the truth of an 'event' is synonymous with the expectations of the witness, which both generate, and retrospectively shape and collate, the subject under observation. The orthodox apologist Henry Liddon saw this idea of perception as creation epitomised in the work of Ludwig Feuerbach. Feuerbach had argued that '[t]he power of miracle is . . . nothing else than the power of the imagination',⁵⁹ and Liddon saw in this theory the suggestion that Jesus was 'divinised' by the enthusiasm of his disciples.⁶⁰ But Feuerbach's influential treatise, *The Essence of Christianity* (1841), which was translated into English by George Eliot in 1854, was less concerned with the origins of the gospel narratives as historical